IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.14186 of 2006
DATE OF DECISION: 7.9.2006
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Rakesh Kumar

..PETITIONER

VS.

Union of India and others.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. Deepak Gupta, Advocate**
for the petitioner.
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JUDGMENT:

This petition filed by the petitioner Rakesh Kumar prays for setting aside of order dated 12.1.2004 passed by the appropriate Government. By dint of the impugned order, prayer of the petitioner for referring the industrial dispute raised by him to the Labour Court, for adjudication, has been turned down by the appropriate Government.

We have heard learned counsel for the petitioner at length and have gone through the file carefully.

It may be noticed that the petitioner was relieved of his duties on 31.5.2000. He, aggrieved with the action of respondent Nos. 3 to 5, questioned it before the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the CAT, in short) also claiming temporary status and regularization with consequential relief. The dispute was adjudicated upon by the CAT. It was answered against the petitioner vide order dated April 30,2001. It was concluded in the following manner:-

> "9. The learned counsel for appearing on behalf of the respondents has, during the course of argument, placed reliance also on the order dated 12th February, 1999 passed and clarifications rendered by the Full Bench of this Tribunal in OA Nos. 896/95, 1764/92 and 817/94. The following two questions were posed before the Full Bench:-
>
> (1) Whether bunglow peons in Railways are Railway employees or not;
>
> (2) Whether their services are purely contractual and they can be discharged in terms of their contract.
>
> 10. The aforesaid questions were answered by the Full Bench by observing that the learned counsel for the parties themselves conceded that the bunglow peons/ khalasis in the Railways are not Railway employees and that their services being purely contractual in nature could be terminated at any time in terms of their contract so long as they did not acquire temporary status. The following further question posed before the Full Bench was answered in the negative:-
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> (1) Whether upon putting in 120 days continuous service, a bungalow peon/ khalasi acquires temporary status.
>
> (2) In the totality of the facts and circumstances narrated in the preceding paragraphs and having regard to the legal position clarified by the Full Bench of this Tribunal, I find no force in these OAs. The same are, therefore, dismissed without any order as to costs."

Having lost his claim there on merits, the petitioner preferred a Civil Writ Petition before the Delhi High Court against the order of CAT. However, the writ petition was dismissed by a Division Bench of Delhi High Court vide order dated November 20,2001, upholding the order of

CAT. However, a liberty was given to the petitioner to make representation only qua his claim for any re-engagement or conferment of any temporary status. After having lost consecutively before the CAT as well as Delhi High Court, the petitioner adopted a new tactic of raising an industrial dispute before the appropriate Government by serving a demand notice, thereby again challenged his termination by referring to the provisions of the Industrial Disputes Act, 1947 (for short the Act). The pleas which were raised before the appropriate Government were already raised by the petitioner before the CAT and the same were accordingly dealt with by the appropriate forum, referred to above. The findings so returned by the CAT were also up-held by the Delhi High Court. The relief claimed before the CAT as also before the Delhi High Court was identical with that, which has been sought before the appropriate Government. The cause of action was also similar. Learned counsel for the petitioner has failed to show that the cause of action in the earlier proceedings before the CAT as well as before the Delhi High Court was distinct from that of the proceedings sought to be projected subsequently before the appropriate Government. Once the lis between the parties has already been adjudicated upon and decided by the appropriate forum, the petitioner cannot be permitted to raise the same dispute again on the same cause of action before another forum. The bar enshrined in Order 2 Rule 2 of Civil Procedure Code, which is based on cardinal principle that the opposite party should not be vexed twice, comes in the way of the petitioner.

We are of the considered opinion that the appropriate Government has rightly declined the prayer of the petitioner of referring his dispute to the Labour Court.

It may not be out of place to mention here that the instant petition has been filed challenging the order dated 12.1.2004, after a lapse of about 2 years and 8 months, that too without any explanation. The Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271** has clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued. Sadasivaswamy's case (supra) has been followed by this Court in the case of **Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587**. Therefore, the instant petition also suffers from delay and latches. No relief can be granted to the petitioner. Thus, the instant petition is dismissed on merits and delay as well.

(ARVIND KUMAR)
JUDGE

September 7,2006 **(J.S. NARANG)**
Jiten **JUDGE**